

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIAS ILYIA,

Plaintiff,

vs.

MAROUN EL KHOURY and SOPHIE
JALBERT EL KHOURY,

Defendants.

Case No. C11-1593RSL

ORDER DISMISSING DEFENDANT
SOPHIE EL KHOURY FOR LACK
OF SERVICE

This matter comes before the Court on defendant Sophie El Khoury's "Motion to Dismiss for Lack of Service." Dkt. # 93. Ms. El Khoury claims that plaintiff has failed to serve her with a summons and complaint and that the deadline to do so has passed. This Court agrees and grants Ms. El Khoury's motion for dismissal.

Once service has been challenged, plaintiffs bear the burden of establishing that service was valid under the Federal Rules of Civil Procedure. Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004). Service is a requirement in order for a district court to assume personal jurisdiction over a defendant. Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986). "Neither actual

1 notice nor naming the defendant in the complaint provides personal jurisdiction without
2 substantial compliance with Rule 4.” Id.

3 The rules for international service are set forth in Rule 4(f). The question before the Court
4 is whether plaintiff has proven that he substantially complied with Rule 4(f)(2)(C)(i),¹ which
5 allows service by “delivering a copy of the summons and of the complaint to the individual
6 personally” unless “prohibited by the foreign country’s law.” Fed. R. Civ. P. 4(f)(2)(C)(i).

7 Plaintiff’s Lebanese counsel, Ali Mansour, claims to have personally served defendant
8 Ms. El Khoury on June 30, 2012, in the interrogation room at the police station in Jouneih,
9 Lebanon. Decl. of Ali Mansour, Dkt. # 99-2, at 2. The Court finds the legal and factual support
10 for this claim inadequate to demonstrate substantial compliance with the federal rules of service.

11 As regards the legality of the service, the record does not establish that Lebanese law
12 permits opposing counsel to personally serve a defendant who is represented by counsel.
13 According to a declaration by Ms. El Khoury’s Lebanese counsel, “the law prohibits an attorney
14 from speak [sic] directly with a represented party,” and personal service by opposing counsel
15 “would have been an improper ex parte contact on his part.” Decl. of Samer Hajj, Dkt. # 97, at
16 ¶8. In response, Lebanese counsel Ali Mansour asserts that “[t]here is no statutory provision
17 preventing me from serving the Defendant Sophie El Khoury with service of process in a suit
18 filed against her in the United States.” Decl. of Ali Mansour, Dkt. # 99-2, at ¶10. This assertion
19 ignores the plain language of Rule 4(f), which clearly states that service may be completed by
20 personally delivering a copy of the summons and complaint “*unless prohibited by the foreign*
21 *country’s law.*” Fed. R. Civ. P. 4(f)(2)(C)(i) (emphasis added). The Court holds that the plaintiff
22 has failed to meet his burden of showing that service in this manner comports with Lebanese
23 law.

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25 ¹ The other provisions of Rule 4(f) do not apply because plaintiff claims that Ms. El Khoury was
26 personally served, and the U.S. does not have an applicable international service treaty with Lebanon,
27 where Ms. El Khoury currently resides.

Moreover, plaintiff has not sufficiently established a factual record to demonstrate that service was completed in the manner described. Mr. Mansour claims to have served Ms. El Khoury on June 30, 2012, following a police interrogation in Lebanon. Ms. El Khoury allegedly accepted the service and was reviewing the papers when her husband “angrily forced her to not receive the papers,” and she “threw the papers onto the table in front of her.” Decl. of Ali Mansour, Dkt. # 99-2, ¶¶7–8. During this time, Ms. El Khoury’s translator had allegedly left the room and was not present to witness these events. *Id.* at ¶9. In support of this claim, plaintiff submits a document entitled Proof of Service of Summons and Complaint, Dkt. # 99-6, which was signed by Mr. Mansour.

In direct conflict with Mr. Mansour’s declaration and signed Proof of Service, the defendant submits multiple declarations averring that Ms. El Khoury was not in fact served on June 30, 2012, at the police station in Jouneih, Lebanon. According to these declarations, Ms. El Khoury was accompanied at all times by her translator, and Mr. Mansour never spoke directly to Ms. El Khoury or gave her any written materials. Decl. of Hanna Louis, Dkt. # 94, at 4; Decl. of Maroun El Khoury, Dkt. # 96, at 2–3; Decl. of Samer Hajj, Dkt. # 97, at 2–3; Decl. of Sophie El Khoury, Dkt. # 98, at 3.

The conflicting versions of these events cannot both be true. Mr. Mansour is outnumbered by witnesses who say that Ms. El Khoury was never served in the manner described. One of these witnesses, Hanna Louis, appears to have only served as a translator during the police interrogation and is not otherwise invested in the outcome of the case. Decl. of Hanna Louis, Dkt. # 94, at 3. In contrast, Mr. Mansour is an interested party insofar as he is plaintiff’s Lebanese counsel. Having reviewed the record established by both parties, the Court finds that service was not completed on June 30, 2012, in Lebanon as described by plaintiff.

In its previous Order Granting Motion for Reconsideration and Establishing Deadline for Service, Dkt. # 83, this Court gave the plaintiff notice that he had until September 27, 2012, to serve Ms. El Khoury with a summons and complaint. Plaintiff was further notified by defense

1 counsel on August 3, 2012, that the purported service on June 30, 2012, did not occur and would
2 be challenged in this Court. Decl. of Michael Patterson, Dkt. # 95, at Ex. 1. Now, more than one
3 year after this case was initiated, and despite repeated notice that the plaintiff must serve Ms. El
4 Khoury according to the Federal Rules of Civil Procedure, the Court finds that the plaintiff has
5 failed to do so.

6 For all of the foregoing reasons, defendant's motion to dismiss Sophie El Khoury for lack
7 of service is GRANTED.

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10 Dated this 7th day of December, 2012.

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13 Robert S. Lasnik
14 United States District Judge
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